

TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Mark Kutney, AICP/(954) 797-1101

SUBJECT: Quasi Judicial Hearing: Variance
V 4-3-01 Miller, Legg & Associates, Inc./Moersch, Fuselli, Amsouth
Bank, Trustee of the Fuselli Trust, 4450 Flamingo Road

TITLE OF AGENDA ITEM: V 4-3-01 Miller, Legg & Associates, Inc./Moersch, Fuselli, Amsouth Bank, Trustee of the Fuselli Trust, 4450 Flamingo Road (AG)

REPORT IN BRIEF: The applicant requests a variance to reduce the Code's 250 foot separation requirement between service stations and property land use plan designated residential to 75 feet. The parcel that is land use plan designated residential is to the north, and is under consideration for rezoning to CF, Community Facilities District under petition ZB 4-6-01 for the purpose of constructing a water retention and passive recreation area associated with Westridge Commons. The applicant has offered to voluntarily deed restrict this parcel to be only used for a lake and passive recreational purposes.

The intent of the Code's 250 foot separation requirement between service stations and property land use plan designated as residential is to protect abutting residential property from car repair and car wash noise, canopy lighting glare, gasoline vapors, and to provide a buffer for safety purposes. Although the passive recreation and water retention area do not need to be protected from the impact of a service station, the applicant has reasonable use of the land without the granting of the requested variance, and this request is self-created since there are not special circumstances which apply to this property.

PREVIOUS ACTIONS: Town Council tabled the item from the September 6, 2001 to the September 19, 2001 meeting at the request of the applicant (5-0).

Town Council tabled the item from the September 19, 2001 to the October 3, 2001 meeting at the request of the applicant (5-0).

Town Council tabled the item from the October 3, 2001 to the November 7, 2001 meeting at the request of the applicant (5-0).

CONCURRENCES: The Planning and Zoning Board recommended denial of the request at its August 22, 2001 meeting (5-0).

FISCAL IMPACT: None

RECOMMENDATION(S): Motion to deny

Attachment(s): Justification letter, Land use map, Subject site map, Aerial

DEVELOPMENT SERVICES DEPARTMENT

Planning & Zoning Division

MEMORANDUM

PZ 11-03-01

TO: Thomas J. Willi, Town Administrator

THRU: Mark Kutney, AICP, Development Services Director

FROM: Christopher M. Gratz, Planner II

DATE: November 1, 2001

RE: Westridge Commons: P 5-1-01, ZB 4-5-01, ZB 4-6-01, V 4-3-01
Petitioner/Owner: Miller, Legg & Associates, Inc./Moersch, Fuselli, Amsouth Bank, Trustee of the Fuselli Trust

Attached is a revised concept plan submittal from the Stiles Development Corporation for the above captioned petitions. The basis for the resubmittal is to address resident concerns and the Planning and Zoning Board's recommendation of denial for all of the petitions.

The revised site layout shows new locations for the grocery store, linear strip retail, and outparcel #2. The grocery store and linear strip retail have traded places and have been reconfigured. Included in the grocery store modification is a truck turning area so that grocery delivery vehicles will utilize Flamingo Road exclusively. The change in location of outparcel #2 could result in variance petition V 4-3-01 being withdrawn. The size of the overall development has been reduced by 40,000 square feet. The two (2) proposed openings along Orange Drive have been modified. The concept plan now shows one (1) 60' unrestricted access opening along Orange Drive.

A table of restrictions has been added to the concept plan. These restrictions include but are not limited to: restricting permitted uses to those allowed in B-2, Community Business Districts, maximum center size of 160,000 square feet, maximum individual building size of 60,000 square feet, maximum building height of 25' on the east 300' of the site, maximum height of light poles of 25'. Provided along the eastern boundary is a landscape buffer of 70', 8' concrete wall that extends 90' along Orange Drive, a 10' berm, 1 shade tree 14-16' in height per 20 lineal feet of berm, 1 accent tree 10-12' in height per 30 lineal feet of berm, continuous row of hedge at the top of the berm, and commitment to complete berm and wall within 120 days from the start of construction.

This information has been provided to Council as an addendum to the aforementioned petitions above and does not alter or impact the staff recommendation.

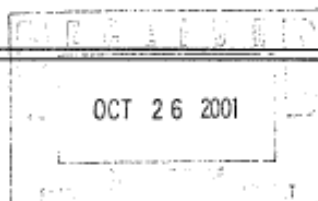


**NATIONAL DEVELOPER
OF THE YEAR**



October 25, 2001

Chris Grantz
Town of Davie
6591 Orange Drive
Davie, FL 33314



300 S.E. 2nd Street
Ft. Lauderdale, FL 33301
954.627.9160
954.627.9288 Fax
stiles.com
info@stiles.com

**RE: WESTRIDGE COMMONS
N.E.C. FLAMINGO ROAD AND ORANGE DRIVE**

Dear Chris:

In response to the issues raised at the August 22nd Planning & Zoning Board meeting, the purpose of this submittal is to request two modifications of our previous applications for the above referenced project.

1) Revised Master Plan Resubmittal:

In order to address the concerns that were raised by the homeowner's association at the Planning & Zoning Board meeting, we have made several substantial improvements to the Conceptual Master Plan. These changes are described below:

- a) Relocated the grocery store away from the east property line.
- b) Reduced the curb cuts on Orange Drive down to one opening.
- c) Increased the height of the rear berm to 10' (from 5').
- d) Lengthened the screen wall by 90' feet along Orange Drive.
- e) Provided a truck turning area so that grocery delivery vehicles enter and exit via Flamingo Road only.
- f) Relocated Outparcel #2 away from the north property line.
- g) Lowered all site light poles down to 25' (from 40').

We have also agreed to several additional restrictions that are documented in the table of restrictions that has been added to the Master Plan. These restrictions are summarized below:

- a) Reduced the maximum size of the center from 200,000 s.f. to 160,000 s.f.
- b) Limited the permitted uses to only those allowed within B2. Additionally, we have further excluded numerous B2 uses that are not a part of our development plan.
- c) Limited the maximum individual building size to 60,000 s.f.
- d) Provided shade trees on the east berm at 2x Code requirements.
- e) Provided accent trees on the east berm at 3x Code requirements.
- f) Committed to complete the rear berm and wall within 120 days of the start of the project.

Chris Grantz
October 25, 2001
Page 2 of 2

2) Withdrawal of Variance

Since Outparcel #2 has now been relocated so that it no longer lies within 250' of residentially land used property, there is no longer the need for a variance. We are therefore requesting that our Application for Variance #V4-3-01 be withdrawn.

With these modifications and restrictions, we believe that each of the concerns raised by the homeowners association has now been fully addressed. Please contact me at (954) 627-9354 if you should have any questions. Thank you very much.

Sincerely,

STILES DEVELOPMENT CO.



Stephen M. Fleisher
Director of Retail Development

[illegible]

TOWN OF DAVIE
Development Services Department
Planning & Zoning Division Staff
Report and Recommendation

APPLICANT INFORMATION

Owner:

Name: Barry Webber, Attorney-In-Fact
Address: 4430 SW 64 Avenue
City: Davie, FL 33314
Phone: (954)587-3058

Agent:

Name: Miller, Legg & Associates, Inc.
Address: 1800 North Douglas Road, Suite 200
City: Pembroke Pines, FL 33024
Phone: (954)436-7000

BACKGROUND INFORMATION

Date of Notification: August 1, 2001 **Number of Notifications:** 11

Application History: No deferrals have been requested.

Application Request: One (1) variance **FROM:** Section 12-34(Y)(2) of the Land Development Code which requires a minimum 250 foot separation between service stations and property land use plan designated residential; **TO:** reduce the minimum separation to 75 feet.

Address/Location: 4450 Flamingo Road/Generally located 600 feet north of the northeast corner of Orange Drive and Flamingo Road.

Future Land Use Plan Designation: Commercial

Zoning: AG, Agricultural District (B-3, Planned Business Center District proposed pursuant to application ZB 4-6-01)

Existing Use: Vacant

Proposed Use: Service Station

Parcel Size: 2.066 acres (90,000 square feet)

	<u>Surrounding Uses:</u>	<u>Surrounding Land Use Plan Designation:</u>
North:	Proposed water retention and passive recreation area	Residential (1 DU/AC)
South:	Commercial (Westridge Commons)	Commercial
East:	Commercial (Westridge Commons)	Commercial
West:	Commercial (Flamingo Commons)	Commercial

Surrounding Zoning:

North: AG, Agricultural District (CF, Community Facilities District proposed

pursuant to application ZB 4-5-01)

South: AG, Agricultural District (B-3, Planned Business Center District proposed)

East: AG, Agricultural District (B-3, Planned Business Center District proposed)

West: B-3, Planned Business Center District

ZONING HISTORY

Related Zoning History: None

Previous Request on same property: None

APPLICATION DETAILS

The applicant requests a variance to reduce the Code's 250 foot separation requirement between service stations and property land use plan designated residential to 75 feet. The parcel that is land use plan designated residential is to the north, and is under consideration for rezoning to CF, Community Facilities District under petition ZB 4-6-01 for the purpose of constructing a water retention and passive recreation area associated with Westridge Commons. The applicant has offered to voluntarily deed restrict this parcel to be only used for a lake and passive recreational purposes.

Applicable Codes and Ordinances

1. Section 12-309 of the Land Development Code, review for variances.
2. Section 12-34(Y)(2) of the Land Development Code, Service Stations and Motor Fuel Pump Islands, states that there shall be a minimum distance of two hundred fifty (250) feet between property occupied by a service station and the nearest points on any lot land use plan designated residential.

Comprehensive Plan Considerations

Planning Area: The subject property falls within Planning Area 2. Planning area 2 includes the westernmost section of the Town north of Orange Drive and south of SW 14 Street, and bound on the west by Interstate 75 and on the east by SW 100 Avenue. The predominant existing and planned land use is single family residential at a density of one dwelling per acre.

Broward County Land Use Plan: The subject site falls within Flexibility Zone 100.

Applicable Goals, Objectives & Policies: Policy 17-6: Land Development regulations shall address incompatible land uses through requirements such as buffering and setbacks.

Policy 17-7: Adopted land development regulations shall continue to set forth setbacks or separation regulations, landscaping requirements, and minimum open space criteria to enhance living and working environments.

Staff Analysis

The intent of the Code's 250 foot separation requirement between service stations and property land use plan designated as residential is to protect abutting residential property from car repair and car wash noise, canopy lighting glare, gasoline vapors, and to provide a

buffer for safety purposes. Although the passive recreation and water retention area do not need to be protected from the impact of a service station, the applicant has reasonable use of the land without the granting of the requested variance, and this request is self-created since there are not special circumstances which apply to this property.

Findings of Fact

Variances:

Section 12-309(B)(1):

The following findings of facts apply to the variance request.

(a) There is not a special circumstance or condition applying to the land or building for which the variance is sought, which circumstance or condition is peculiar to such land or building and does not apply generally to land or building in the same district, and that said circumstance or condition is such that the strict application of the provisions of this chapter would not deprive the application of the reasonable use of such land or building for which the variance is sought. The alleged hardship is self-created by persons having an interest in the property.

The need for the requested variance is directly caused by the site configuration chosen by the applicant .

(b) The granting of the variance is not necessary for the reasonable use of the land or building and that the variance as requested is not the minimum variance that will accomplish this purpose.

The applicant can accommodate a service station without requesting a variance.

(c) Granting of the requested variance is not in harmony with the general purpose and intent of this chapter and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

This request is contingent upon approval of application ZB 4-5-01. Variance requests should not be dependent upon a zoning change. They are based upon and evaluated against existing zoning designations and site conditions. Denial of the rezoning application will diminish the applicant's rationale that they are providing 337 foot separation from residential property. In addition, approval of this variance will increase nuisance potential and hinder development of the residential property to the north in accord with existing regulations.

Staff Recommendation

Recommendation: Based upon the above and the findings of facts in the negative, staff recommends denial, of petition V 4-3-01.

Planning & Zoning Board Recommendation

The Planning and Zoning Board recommended denial of the request at its August 22, 2001

meeting (5-0).

Exhibits

1. Justification letter
2. Land use map
3. Subject site map
4. Aerial

Prepared by: _____

Reviewed by: _____

Variance Request for "Westridge Commons"

Request:

The applicant is requesting a variance from Section 12-34 (Y) (2) *Location of service stations*, to reduce the minimum distance of 250-feet to 75-feet between the nearest point on a service station lot and any lot with a land use designation of residential. However, with the design of this site and a voluntary deed restriction as explained below, the actual dimension between the service station parcel and land that would contain residential uses would be a minimum of 337 feet. This will maintain, and actually exceed, the intent of this code section.

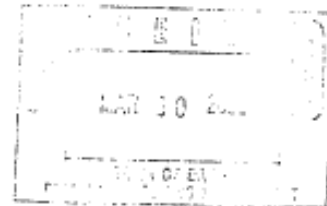
Project Summary:

The master plan, submitted with this application as a reference, provides the overall layout of this commercial development. Outparcel #2 is a proposed service station outparcel. The northern lot line of Outparcel #2 is located 75-feet from the preservation and lake area, which has a Land Use Plan designation of Residential Estate, 1 DU/AC, and a zoning designation of AG.

The applicant has submitted, along with this variance application, a rezoning application to rezone the overall property into two zoning districts. B-3 for the commercial parcel, and CF for the preservation and lake area. The developer has volunteered to provide a deed restriction for the area to be rezoned to the CF district to allow only flood protection (a water management lake) and passive recreational uses (such as viewing areas and horse trails).

The preservation and lake area to be zoned CF is 262.29 feet wide. In view of the proposed CF rezoning and the voluntary deed restriction that will restrict the development of the property to a lake and passive recreational activities, the distance between the service station and land with a residential land use designation that could actually be developed with residential uses is 337 feet, which exceeds the code requirement of 250 feet. Furthermore the location of the service station at the driveway opening on Flamingo Road will provide more convenient access for the patrons of the service station.

The intent of code section 12-34 (Y) (2) is to provide a minimum distance of 250 feet from any land that is, or could be, developed with residential uses. This variance request, together with the proposed rezoning to CF subject to a deed restriction, will more than accomplish the intended result.



Supplemental data for the Variance Application for the "Westridge Commons"

The Town of Davie requires specific criteria to be reviewed for all variance requests, taken from code Section 27-804 (g). The following questions are provided on the variance application and are answered below:

1. *Whether or not there are special circumstances or conditions applying to the land or building for which the variance is sought, which circumstances or conditions are peculiar to such land or buildings and do not apply generally to land or buildings in the same district, and that said circumstances or conditions are such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of such land or building for which the variance is sought, and that alleged hardship is not self created by any person having an interest in the property.*

The Town of Davie in establishing separation requirements between service stations and land with a residential designation was seeking to protect land that is now, or may in the future be, developed with homes. There are special and unique circumstances regarding that distance restriction that are applicable in this circumstance. The residential land that falls within 250 feet from the service station is held in common ownership with the property where the service station is proposed. The residential land that falls within the 250-foot distance from the service station is not now and will never be used for residences. Instead, that property will be used exclusively for lake and passive recreational facilities. It would be an unnecessary hardship to prohibit a service station from being located within 250 feet of land that will not be developed for residential uses. The developer will provide a deed restriction that will restrict residentially designated land in the manner described here. This restriction will provide a 337-foot separation between the north property line of proposed service station outparcel and residential land that may be developed with residential uses. (See attached sketch).

2. *The granting of the variance is necessary for the reasonable use of the land or building and that the variance as requested is the minimum variance that will accomplish this purpose.*

The variance proposed provides a more reasonable use of the land because it would allow the service station to be more conveniently located within the shopping center and will provide better access between the service station and the adjacent roadway. The variance requested is the minimum necessary to achieve that result.



3. *That granting the variance will be in harmony with the general purpose and intent of this chapter and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.*

As stated in the response to standard number 1, above, the proposed variance would result in a development that achieves, and in fact exceeds, the goal established by the Town's zoning code of a separation of 250 feet between residential uses and service stations. The distance between the proposed service station and the land with a residential land use designation that could actually be developed with residential uses will be approximately 337 feet. Furthermore the location of the service station at the driveway opening on Flamingo Road will provide more convenient access for the patrons of the service station. Therefore, the granting of the variance will clearly be in harmony with the general purpose and intent of the code and will facilitate the development of the shopping center in a manner that is beneficial to the public welfare.

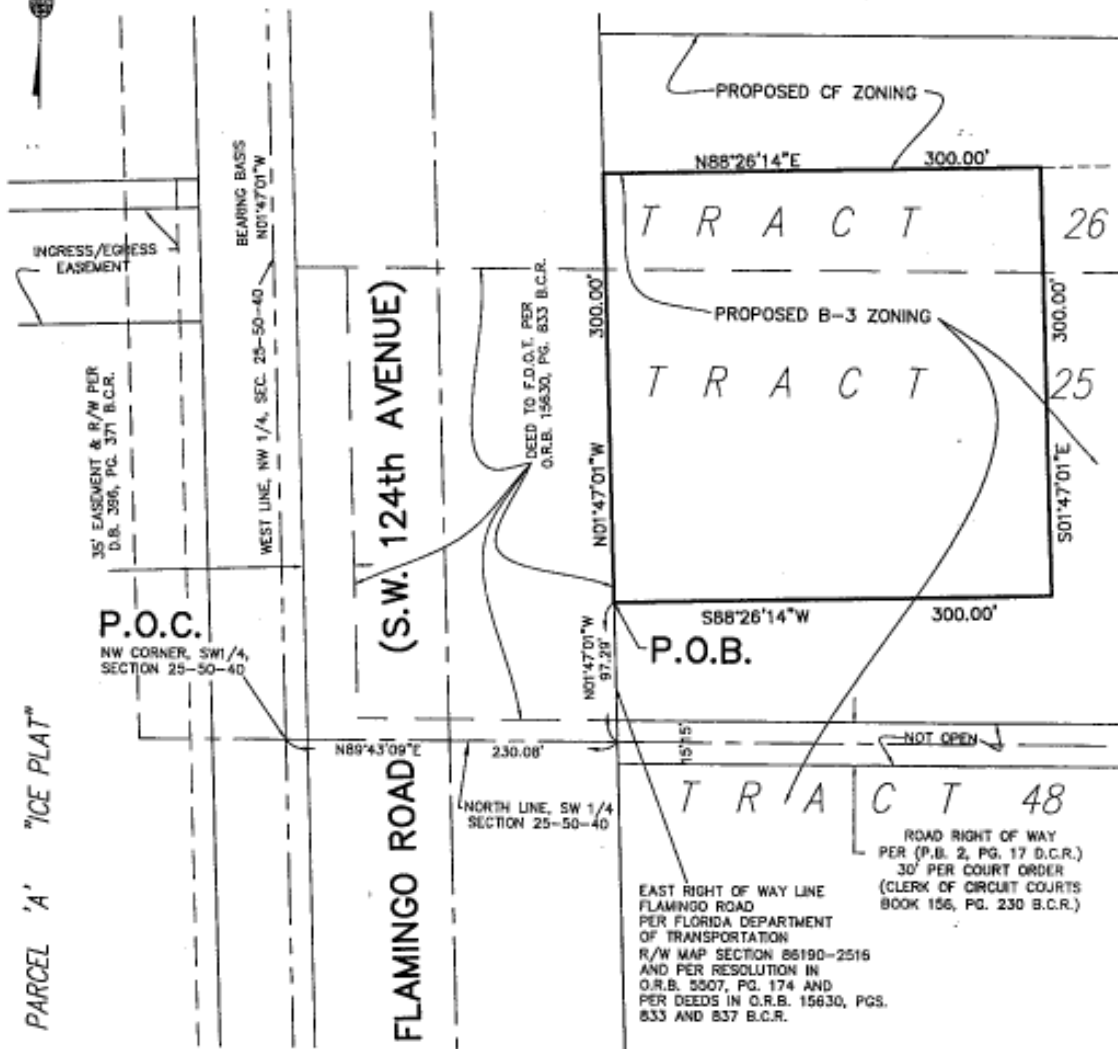
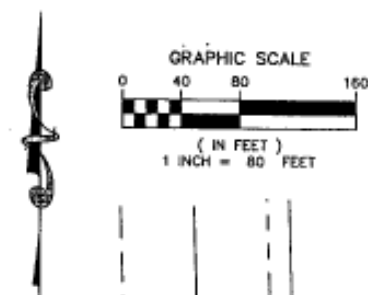
SHEET 1 OF

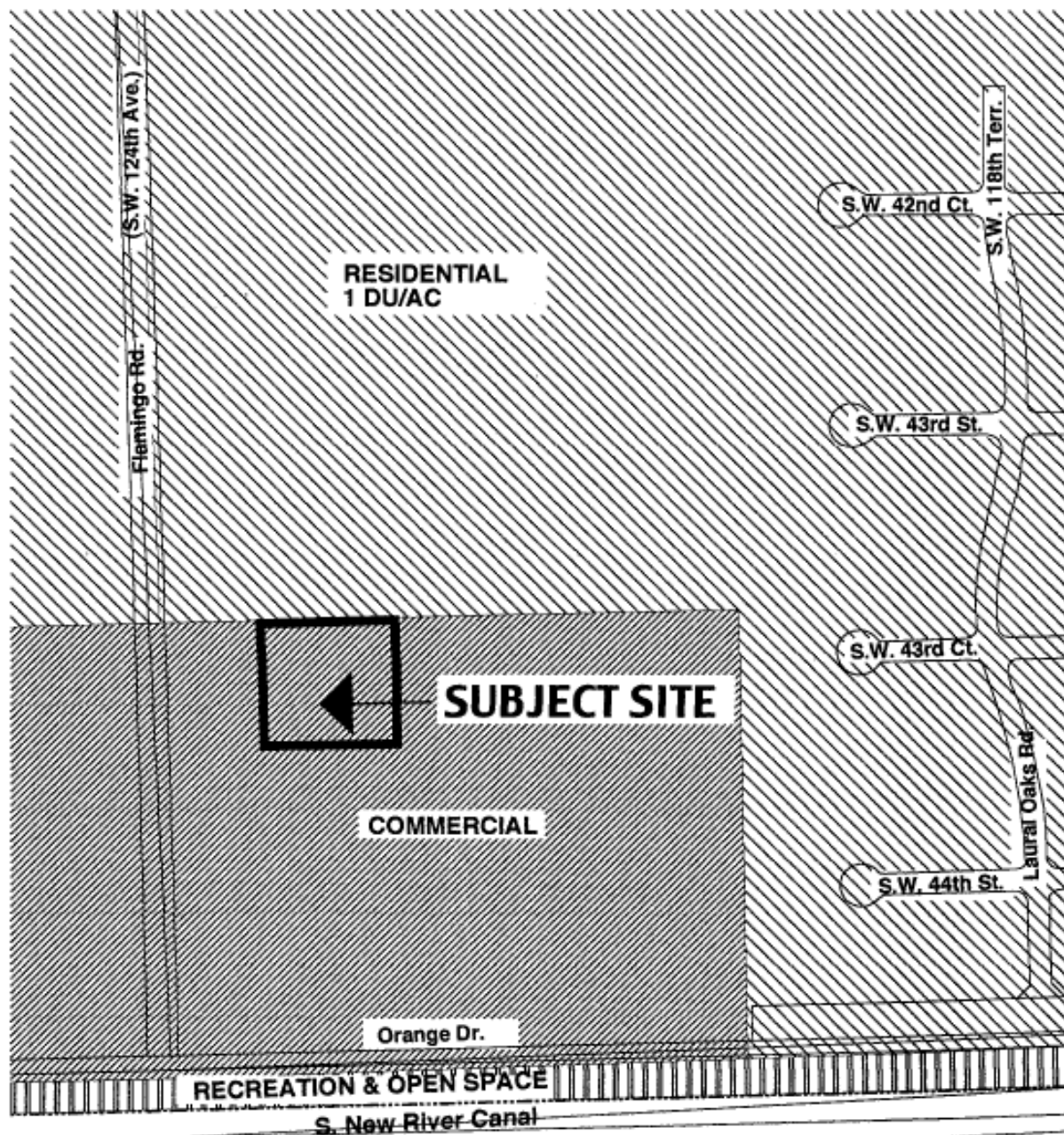
COMMENCE AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 25; THENCE NORTH 89°43'09" EAST ALONG THE NORTH LINE OF SAID SOUTHWEST QUARTER FOR 230.08 FEET TO THE EAST RIGHT-OF-WAY LINE OF FLAMINGO ROAD; THENCE ALONG SAID RIGHT-OF-WAY LINE, NORTH 01°47'01" WEST 97.29 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE ALONG SAID RIGHT-OF-WAY LINE, NORTH 01°47'00" WEST 300.00 FEET; THENCE NORTH 88°26'14" EAST 300.00 FEET; THENCE SOUTH 01°47'00" EAST 300.00 FEET; THENCE SOUTH 88°26'14" WEST 300.00 FEET TO THE POINT OF BEGINNING.

BEARINGS ARE BASED ON A BEARING OF NORTH 01°47'01" WEST ALONG THE WEST LINE SECTION 25-50-40.

LEGEND:

1. P.O.C. = POINT OF COMMENCEMENT
2. P.O.B. = POINT OF BEGINNING
3. CL = CENTERLINE
4. P.B. = PLAT BOOK
5. PG. = PAGE
6. B.C.R. = BROWARD COUNTY RECORDS
7. D.C.R. = DADE COUNTY RECORDS
8. F.D.D.T. = FLORIDA DEPARTMENT OF TRANSPORTATION
9. D.B. = DEED BOOK
10. O.R.S. = OFFICIAL RECORDS BOOK
11. R/W = RIGHT OF WAY





PETITION NUMBER		N 4
V 4-3-01		
Subject Site Area Future Land Use Plan		
PREPARED 5/18/01	Scale: 1"=300'	
BY THE PLANNING & ZONING DIVISION		

